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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 JPMORGAN CHASE BANK, N.A.,

Case No. 2:17-CV-74 JCM (PAL)

8 Plaintiff(s),

ORDER

9 v.

10 SFR INVESTMENTS POOL 1, LLC, et al.,

11 Defendant(s).

12
13 Presently before the court is plaintiff JPMorgan Chase Bank, N.A.'s motion for summary
14 judgment. (ECF No. 40). Defendants SFR Investments Pool 1, LLC ("SFR") and Rancho Las
15 Brisas Master Homeowners Association ("the HOA") filed responses (ECF Nos. 44, 45), to which
16 plaintiff replied (ECF No. 46).

17 Also before the court is the HOA's motion for summary judgment. (ECF No. 36). Plaintiff
18 filed a response (ECF No. 43), to which the HOA replied (ECF No. 47).

19 Also before the court is SFR's motion for summary judgment. (ECF No. 39). Plaintiff
20 filed a response (ECF No. 43), to which SFR replied (ECF No. 48).

21 **I. Facts**

22 This case involves a dispute over real property located at 4856 La Cumbre Drive, Las
23 Vegas, Nevada, 89147 (the "property"). (ECF No. 1).

24 *i. Plaintiff's interest in the property*

25 Fidel Pajarillo purchased the property in 2005. *Id.* On August 29, 2005, Pajarillo obtained
26 a loan in the amount of \$227,500 from Washington Mutual Bank, FA ("WM") to finance the
27 purchase. (ECF No. 40-1). The loan was secured by a deed of trust recorded on September 7,
28 2005. *Id.*

1 In 2008, WM was closed by the Office of Thrift Supervision. The Federal Deposit
2 Insurance Corporation (“FDIC”) was appointed as WM’s receiver. On September 25, 2008,
3 plaintiff entered into a purchase and assumption agreement with the FDIC to obtain all beneficial
4 interest in the deed of trust. (ECF No. 40-2).

5 *ii. Defendants’ interest in the property*

6 On September 3, 2009, Nevada Association Services (“NAS”) acting on behalf of the
7 HOA, recorded a notice of delinquent assessment lien, stating an amount due of \$1,026. (ECF No.
8 39-1 at 43). On November 20, 2009, NAS, acting on behalf of the HOA, recorded a notice of
9 default and election to sell to satisfy the delinquent assessment lien, stating an amount due of
10 \$1,907. (ECF No. 39-1 at 53).

11 On September 21, 2012, NAS recorded a notice of foreclosure sale, stating an amount due
12 of \$4,647.17 and an anticipated sale date of October 19, 2012. (ECF No. 39-1 at 92). On January
13 11, 2013, the HOA foreclosed on the property. (ECF No. 39-2 at 8-10). SFR purchased the
14 property at the foreclosure sale for \$16,600. *Id.* A foreclosure deed in favor of SFR was recorded
15 on January 16, 2013. *Id.*

16 *iii. Procedural history*

17 On January 9, 2017, plaintiff filed the underlying complaint, alleging causes of action for
18 quiet title and unjust enrichment. (ECF No. 1). On April 12, 2017, SFR filed counterclaims against
19 plaintiff for (1) declaratory relief/quiet title pursuant to NRS 30.010 *et seq*, NRS 40.010, and NRS
20 116.3116; and (2) preliminary and permanent injunction.¹ (ECF No. 21).

21 **II. Legal Standard**

22 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
23 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
24 show that “there is no genuine dispute as to any material fact and the movant is entitled to a
25 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is
26 “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317,
27 323–24 (1986).

28 ¹ SFR also filed these claims as crossclaims against Pajarillo. (ECF No. 21).

1 For purposes of summary judgment, disputed factual issues should be construed in favor
2 of the non-moving party. *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be
3 entitled to a denial of summary judgment, the nonmoving party must “set forth specific facts
4 showing that there is a genuine issue for trial.” *Id.*

5 In determining summary judgment, a court applies a burden-shifting analysis. The moving
6 party must first satisfy its initial burden. “When the party moving for summary judgment would
7 bear the burden of proof at trial, it must come forward with evidence which would entitle it to a
8 directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has
9 the initial burden of establishing the absence of a genuine issue of fact on each issue material to
10 its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000)
11 (citations omitted).

12 By contrast, when the nonmoving party bears the burden of proving the claim or defense,
13 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
14 element of the non-moving party’s case; or (2) by demonstrating that the nonmoving party failed
15 to make a showing sufficient to establish an element essential to that party’s case on which that
16 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving
17 party fails to meet its initial burden, summary judgment must be denied and the court need not
18 consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–
19 60 (1970).

20 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
21 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
22 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
23 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
24 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
25 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,
26 631 (9th Cir. 1987).

27 In other words, the nonmoving party cannot avoid summary judgment by relying solely on
28 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,

1 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
2 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
3 for trial. *See Celotex*, 477 U.S. at 324.

4 At summary judgment, a court's function is not to weigh the evidence and determine the
5 truth, but to determine whether there is a genuine issue for trial. *See Anderson v. Liberty Lobby,*
6 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is "to be believed, and all
7 justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the
8 nonmoving party is merely colorable or is not significantly probative, summary judgment may be
9 granted. *See id.* at 249–50.

10 **III. Discussion**

11 As an initial matter, claim (2) of SFR's counterclaim will be dismissed without prejudice
12 as the court follows the well-settled rule that claims for "injunctive relief" standing alone are not
13 causes of action. *See, e.g., In re Wal-Mart Wage & Hour Emp't Practices Litig.*, 490 F. Supp. 2d
14 1091, 1130 (D. Nev. 2007); *Tillman v. Quality Loan Serv. Corp.*, No. 2:12-CV-346 JCM RJJ, 2012
15 WL 1279939, at *3 (D. Nev. Apr. 13, 2012) (finding that "injunctive relief is a remedy, not an
16 independent cause of action"); *Jensen v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201
17 (E.D. Cal. 2010) ("A request for injunctive relief by itself does not state a cause of action.").

18 Plaintiff raises the following grounds in support of its motion for summary judgment and
19 against defendants': due process and *Bourne Valley*; defects in the foreclosure deed; commercial
20 unreasonability; and SFR's failure to qualify as a bona fide purchaser. (ECF Nos. 40, 43, 46).
21 Plaintiff argues, in the alternative, that if the court rules in favor of defendants on the parties' quiet
22 title claims, that the court should let plaintiff's unjust enrichment claim proceed to trial. The court
23 will first address plaintiff's quiet title arguments.

24 *a. Quiet title*

25 Under Nevada law, "[a]n action may be brought by any person against another who claims
26 an estate or interest in real property, adverse to the person bringing the action for the purpose of
27 determining such adverse claim." Nev. Rev. Stat. § 40.010. "A plea to quiet title does not require
28 any particular elements, but each party must plead and prove his or her own claim to the property

1 in question and a plaintiff's right to relief therefore depends on superiority of title." *Chapman v.*
2 *Deutsche Bank Nat'l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (citations and internal quotation
3 marks omitted). Therefore, for a party to succeed on its quiet title claim, it needs to show that its
4 claim to the property is superior to all others. *See also Breliant v. Preferred Equities Corp.*, 918
5 P.2d 314, 318 (Nev. 1996) ("In a quiet title action, the burden of proof rests with the plaintiff to
6 prove good title in himself.").

7 Section 116.3116(1) of the Nevada Revised Statutes² gives an HOA a lien on its
8 homeowners' residences for unpaid assessments and fines; moreover, NRS 116.3116(2) gives
9 priority to that HOA lien over all other liens and encumbrances with limited exceptions—such as
10 "[a] first security interest on the unit recorded before the date on which the assessment sought to
11 be enforced became delinquent." Nev. Rev. Stat. § 116.3116(2)(b).

12 The statute then carves out a partial exception to subparagraph (2)(b)'s exception for first
13 security interests. *See* Nev. Rev. Stat. § 116.3116(2). In *SFR Investments Pool 1 v. U.S. Bank*, the
14 Nevada Supreme Court provided the following explanation:

15 As to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two pieces,
16 a superpriority piece and a subpriority piece. The superpriority piece, consisting of
17 the last nine months of unpaid HOA dues and maintenance and nuisance-abatement
charges, is "prior to" a first deed of trust. The subpriority piece, consisting of all
other HOA fees or assessments, is subordinate to a first deed of trust.

18 334 P.3d 408, 411 (Nev. 2014) ("*SFR Investments*").

19 Chapter 116 of the Nevada Revised Statutes permits an HOA to enforce its superpriority
20 lien by nonjudicial foreclosure sale. *Id.* at 415. Thus, "NRS 116.3116(2) provides an HOA a true
21 superpriority lien, proper foreclosure of which will extinguish a first deed of trust." *Id.* at 419; *see*
22 *also* Nev. Rev. Stat. § 116.3116(2)(1) (providing that "the association may foreclose its lien by sale"
23 upon compliance with the statutory notice and timing rules).

24 Subsection (1) of NRS 116.3116 provides that the recitals in a deed made pursuant to
25 NRS 116.3116 are conclusive proof of the matters recited:

26 (a) Default, the mailing of the notice of delinquent assessment, and the recording
27 of the notice of default and election to sell;

28 ² The 2015 Legislature revised Chapter 116 substantially. 2015 Nev. Stat., ch. 266. Except where
otherwise indicated, the references in this order to statutes codified in NRS Chapter 116 are to the
version of the statutes in effect in 2011–13, when the events giving rise to this litigation occurred.

- 1 (b) The elapsing of the 90 days; and
2 (c) The giving of notice of sale[.]

3 Nev. Rev. Stat. § 116.31166(1)(a)–(c).³ “The ‘conclusive’ recitals concern default, notice, and
4 publication of the [notice of sale], all statutory prerequisites to a valid HOA lien foreclosure sale
5 as stated in NRS 116.31162 through NRS 116.31164, the sections that immediately precede and
6 give context to NRS 116.31166.” *Shadow Wood Homeowners Assoc. v. N.Y. Cmty. Bancorp., Inc.*,
7 366 P.3d 1105 (Nev. 2016) (“*Shadow Wood*”). Nevertheless, courts retain the equitable authority
8 to consider quiet title actions when a HOA’s foreclosure deed contains statutorily conclusive
9 recitals. *See id.* at 1112.

10 Here, the parties have provided the recorded notice of delinquent assessment, the recorded
11 notice of default and election to sell, the recorded notice of foreclosure sale, and the recorded
12 trustee’s deed upon sale. *See* (ECF Nos. 39-1, 39-2). Pursuant to NRS 116.31166, these recitals
13 in the recorded foreclosure deed are conclusive to the extent that they implicate compliance with
14 NRS 116.31162 through NRS 116.31164, which provide the statutory prerequisites of a valid
15 foreclosure. *See id.* at 1112 (“[T]he recitals made conclusive by operation of NRS 116.31166
16 implicate compliance only with the statutory prerequisites to foreclosure.”). Therefore, pursuant
17 to NRS 116.31166 and the recorded foreclosure deed, the foreclosure sale is valid to the extent
18 that it complied with NRS 116.31162 through NRS 116.31164.

19
20 ³ The statute further provides as follows:

21
22 2. Such a deed containing those recitals is conclusive against the unit's
23 former owner, his or her heirs and assigns, and all other persons. The receipt for the
24 purchase money contained in such a deed is sufficient to discharge the purchaser
25 from obligation to see to the proper application of the purchase money.

26 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164
27 vests in the purchaser the title of the unit’s owner without equity or right of
28 redemption.

Nev. Rev. Stat. § 116.31166(2)–(3).

1 Importantly, while NRS 116.3116 accords certain deed recitals conclusive effect—*e.g.*,
2 default, notice, and publication of the notice of sale—it does not conclusively, as a matter of law,
3 entitle the buyer at the HOA foreclosure sale to success on a quiet title claim. *See Shadow Wood*,
4 366 P.3d at 1112 (rejecting contention that NRS 116.31166 defeats, as a matter of law, actions to
5 quiet title). Thus, the question remains whether plaintiff has demonstrated sufficient grounds to
6 justify setting aside the foreclosure sale. *See id.*

7 “When sitting in equity . . . courts must consider the entirety of the circumstances that bear
8 upon the equities. This includes considering the status and actions of all parties involved, including
9 whether an innocent party may be harmed by granting the desired relief.” *Id.*

10 ***1. Due process***

11 Plaintiff argues that NRS Chapter 116 is unconstitutional under *Bourne Valley*, wherein
12 the Ninth Circuit held that the HOA foreclosure statute is facially unconstitutional. (ECF No. 40).
13 Plaintiff further contends that *Bourne Valley* renders any factual issues concerning actual notice
14 irrelevant. *Id.* at 6.

15 The Ninth Circuit held that NRS 116.3116’s “opt-in” notice scheme, which required a
16 HOA to alert a mortgage lender that it intended to foreclose only if the lender had affirmatively
17 requested notice, facially violated mortgage lenders’ constitutional due process rights. *Bourne*
18 *Valley*, 832 F.3d at 1157–58. The facially unconstitutional provision, as identified in *Bourne*
19 *Valley*, exists in NRS 116.31163(2). *See id.* at 1158. At issue is the “opt-in” provision that
20 unconstitutionally shifts the notice burden to holders of the property interest at risk. *See id.*

21 “A first deed of trust holder only has a constitutional grievance if he in fact did not receive
22 reasonable notice of the sale at which his property rights was extinguished.” *Wells Fargo Bank*,
23 *N.A. v. Sky Vista Homeowners Ass’n*, No. 315CV00390RCJVPC, 2017 WL 1364583, at *4 (D.
24 Nev. Apr. 13, 2017). To state a procedural due process claim, a claimant must allege “(1) a
25 deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate
26 procedural protections.” *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971,
27 982 (9th Cir. 1998).

1 Here, plaintiff has failed to show that it did not receive proper notice. Plaintiff does not
2 argue that it lacked notice, actual or otherwise, of the event that affected the deed of trust (*i.e.*, the
3 foreclosure sale). Further, the exhibits attached to defendant SFR's motion for summary judgment
4 demonstrate that plaintiff received actual notice. *See* (ECF No. 39-1). Accordingly, plaintiff's
5 challenge based on due process and *Bourne Valley* fails as a matter of law.

6 **2. Whether the foreclosure deed granted defendant a mere lien interest**

7 Plaintiff argues that the language in the foreclosure deed conveyed a mere lien interest to
8 SFR, and was not effective to transfer title to the property. (ECF No. 40). Plaintiff cites the
9 language in the foreclosure deed stating that the HOA hereby grants to SFR "all of its rights, title
10 and interest in and to that certain property" *Id.* This language does not demonstrate that SFR
11 purchased a lien interest in the property. However, by being the top bidder at the foreclosure sale,
12 SFR obtained title to the property. *See* Nev. Rev. Stat. 116.31164(3)(a).

13 **3. Commercial reasonability**

14 Plaintiff argues that the foreclosure sale was commercially unreasonable because the HOA
15 sale price was less than 10% of the fair market value of the property, which is grossly inadequate
16 so as to justify setting the foreclosure aside. (ECF No. 43 at 23).

17 NRS 116.3116 codifies the Uniform Common Interest Ownership Act ("UCIOA") in
18 Nevada. *See* Nev. Rev. Stat. § 116.001 ("This chapter may be cited as the Uniform Common-
19 Interest Ownership Act"); *see also SFR Investments*, 334 P.3d at 410. Numerous courts have
20 interpreted the UCIOA and NRS 116.3116 as imposing a commercial reasonableness standard on
21 foreclosure of association liens.⁴

22 ⁴ *See, e.g., Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC*, 962 F. Supp. 2d 1222, 1229
23 (D. Nev. 2013) ("[T]he sale for \$10,000 of a Property that was worth \$176,000 in 2004, and which
24 was probably worth somewhat more than half as much when sold at the foreclosure sale, raises
25 serious doubts as to commercial reasonableness."); *SFR Investments*, 334 P.3d at 418 n.6 (noting
26 bank's argument that purchase at association foreclosure sale was not commercially reasonable);
27 *Thunder Props., Inc. v. Wood*, No. 3:14-cv-00068-RCJ-WGC, 2014 WL 6608836, at *2 (D. Nev.
28 Nov. 19, 2014) (concluding that purchase price of "less than 2% of the amounts of the deed of
trust" established commercial unreasonableness "almost conclusively"); *Rainbow Bend
Homeowners Ass'n v. Wilder*, No. 3:13-cv-00007-RCJ-VPC, 2014 WL 132439, at *2 (D. Nev.
Jan. 10, 2014) (deciding case on other grounds but noting that "the purchase of a residential
property free and clear of all encumbrances for the price of delinquent HOA dues would raise
grave doubts as to the commercial reasonableness of the sale under Nevada law"); *Will v. Mill
Condo. Owners' Ass'n*, 848 A.2d 336, 340 (Vt. 2004) (discussing commercial reasonableness
standard and concluding that "the UCIOA does provide for this additional layer of protection").

1 In *Shadow Wood*, the Nevada Supreme Court held that an HOA’s foreclosure sale may be
2 set aside under a court’s equitable powers notwithstanding any recitals on the foreclosure deed
3 where there is a “grossly inadequate” sales price and “fraud, unfairness, or oppression.” 366 P.3d
4 at 1110; *see also Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 184 F. Supp. 3d 853, 857–58
5 (D. Nev. 2016). In other words, “demonstrating that an association sold a property at its
6 foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a
7 showing of fraud, unfairness, or oppression.” *Id.* at 1112; *see also Long v. Towne*, 639 P.2d 528,
8 530 (Nev. 1982) (“Mere inadequacy of price is not sufficient to justify setting aside a foreclosure
9 sale, absent a showing of fraud, unfairness or oppression.” (citing *Golden v. Tomiyasu*, 387 P.2d
10 989, 995 (Nev. 1963) (stating that, while a power-of-sale foreclosure may not be set aside for mere
11 inadequacy of price, it may be if the price is grossly inadequate and there is “in addition proof of
12 some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy
13 of price” (internal quotation omitted)))).

14 The *Shadow Wood* court did not adopt the restatement. *Compare Shadow Wood*, 366 P.3d
15 at 1112–13 (citing the restatement as secondary authority to warrant use of the 20% threshold test
16 for grossly inadequate sales price), *with St. James Village, Inc. v. Cunningham*, 210 P.3d 190, 213
17 (Nev. 2009) (explicitly adopting § 4.8 of the Restatement in specific circumstances); *Foster v.*
18 *Costco Wholesale Corp.*, 291 P.3d 150, 153 (Nev. 2012) (“[W]e adopt the rule set forth in the
19 Restatement (Third) of Torts: Physical and Emotional Harm section 51.”); *Cucinotta v. Deloitte &*
20 *Touche, LLP*, 302 P.3d 1099, 1102 (Nev. 2013) (affirmatively adopting the Restatement (Second)
21 of Torts section 592A). Because Nevada courts have not adopted the relevant section of the
22 restatement at issue here, the *Long* test, which requires a showing of fraud, unfairness, or
23 oppression in addition to a grossly inadequate sale price to set aside a foreclosure sale, controls.
24 *See* 639 P.2d at 530.

25 Nevada has not clearly defined what constitutes “unfairness” in determining commercial
26 reasonableness. The few Nevada cases that have discussed commercial reasonableness state,
27 “every aspect of the disposition, including the method, manner, time, place, and terms, must be
28 commercially reasonable.” *Levers v. Rio King Land & Inv. Co.*, 560 P.2d 917, 920 (Nev. 1977).

1 This includes “quality of the publicity, the price obtained at the auction, [and] the number of
2 bidders in attendance.” *Dennison v. Allen Grp. Leasing Corp.*, 871 P.2d 288, 291 (Nev. 1994)
3 (citing *Savage Constr. v. Challenge–Cook*, 714 P.2d 573, 574 (Nev. 1986)).

4 Here, plaintiff fails to set forth sufficient evidence to show fraud, unfairness, or oppression
5 so as to justify the setting aside of the foreclosure sale. Plaintiff’s filings primarily cite the sale
6 price at foreclosure to justify setting aside the sale. (ECF No. 43). This argument overlooks the
7 reality of the foreclosure process. The amount of the lien—not the fair market value of the
8 property—is what typically sets the sales price.

9 Plaintiff cites the CC&Rs mortgage protection clause as evidence of “unfairness” present
10 in the foreclosure process. (ECF No. 43). This court has ruled that language in a mortgage
11 protection clause purporting to subordinate a HOA lien to the first deed of trust does not, without
12 more, constitute unfairness in the context of a HOA foreclosure.⁵ *See, e.g., Bank of America, N.A.*
13 *v. Hollow de Oro Homeowners Association*, --- F. Supp. 3d. ----, 2018 WL 523354 (D. Nev. Jan.
14 23, 2018).

15 Plaintiff argues that oral postponement of the foreclosure sale constitutes evidence of
16 unfairness or oppression. (ECF No. 43). Under NRS 107.082(1), a foreclosure sale can be
17 continued orally for up to three times before a new notice of sale is required to be issued and
18 recorded. *JED Property, LLC v. Coastline RE Holdings NV Corp.*, 131 Nev. Adv. Op. 11, 343
19 P.3d 1239, 1241 (Nev. 2015). Here, the HOA postponed the sale three times. Accordingly, the
20 HOA was required to provide only oral notice of the postponement. *See id.*

21 Further, plaintiff’s argument that the foreclosure deed did not comply with NRS 116.31164
22 does not provide plaintiff with a colorable argument to set aside the foreclosure sale. *See*
23 *discussion section 2, supra.*

24 Accordingly, plaintiff’s commercial reasonability argument fails as a matter of law as it
25 has not set forth evidence of fraud, unfairness, or oppression. *See, e.g., Nationstar Mortg., LLC v.*
26 *SFR Investments Pool 1, LLC*, No. 70653, 2017 WL 1423938, at *2 n.2 (Nev. App. Apr. 17, 2017)

27
28 ⁵ Further, the Supreme Court of Nevada has explicitly rejected plaintiff’s implied argument
that a mortgage protection clause can supersede the statutory structure of NRS 116.3116. *See SFR*
Investments, 334 P.3d at 418-19.

1 (“Sale price alone, however, is never enough to demonstrate that the sale was commercially
2 unreasonable; rather, the party challenging the sale must also make a showing of fraud, unfairness,
3 or oppression that brought about the low sale price.”).

4 **4. *Bona fide purchaser status***

5 Because the court concludes that plaintiff failed to properly raise any equitable challenges
6 to the foreclosure sale, the court need not address the parties’ arguments regarding whether SFR
7 was a bona fide purchaser for value. *See Nationstar Mortg., LLC*, No. 70653, 2017 WL 1423938,
8 at *3 n.3.

9 **b. *Unjust enrichment***

10 Plaintiff argues that even if the court quiets title in favor of defendant, the court should
11 deny defendants’ motion for summary judgment on plaintiff’s unjust enrichment claim because
12 plaintiff expended money to maintain the property after the HOA sale. (ECF No. 43).

13 Under Nevada law, unjust enrichment is an equitable doctrine that allows recovery of
14 damages “whenever a person has and retains a benefit which in equity and good conscience
15 belongs to another.” *Unionamerica Mortg. & Equity Trust v. McDonald*, 626 P.2d 1272, 1273
16 (Nev. 1981); *see also Asphalt Prods. v. All Star Ready Mix*, 898 P.2d 699, 701 (Nev. 1995). To
17 state an unjust enrichment claim, a plaintiff must plead and prove three elements:

- 18 (1) a benefit conferred on the defendant by the plaintiff;
- 19 (2) appreciation by the defendant of such benefit; and
- 20 (3) an acceptance and retention by the defendant of such benefit under
circumstances such that it would be inequitable for him to retain the benefit without
payment of the value thereof.

21 *Takiguchi v. MRI Int’l, Inc.*, 47 F. Supp. 3d 1100, 1119 (D. Nev. 2014) (citing *Unionamerica*, 626
22 P.2d at 1273).

23 Here, plaintiff alleges that it made property tax and property insurance payments (among
24 others) to maintain and preserve the property “because it thought the Deed of Trust survived and
25 it wanted to preserve the collateral for its Loan.” (ECF Nos. 1, 43). Plaintiff asserts that it has
26 therefore pleaded and offered evidence to support each element of an unjust enrichment claim.
27 (ECF No. 43).

1 SFR responds that the voluntary payment doctrine bars plaintiff from recovering on a
2 theory of unjust enrichment, citing *Best Buy Stores, L.P. v. Benderson-Wainberg Assocs., L.P.*,
3 668 F.3d 1019, 1030 (8th Cir. 2012). “The voluntary payment doctrine is an affirmative defense
4 that prevents recovery of amounts voluntarily paid.” *JPMorgan Chase Bank, N.A. v. SFR Invs.*
5 *Pool 1, LLC*, 414 P.3d 812 (Nev. 2018). “The voluntary payment doctrine is a long-standing
6 doctrine of law, which clearly provides that one who makes a payment voluntarily cannot recover
7 it on the ground that he was under no legal obligation to make the payment.” *Best Buy*, 668 F.3d
8 at 1030.

9 On March 15, 2018, the Supreme Court of Nevada considered the same arguments
10 presented here in a case between the same litigants. *See JPMorgan Chase Bank, N.A. v. SFR Invs.*
11 *Pool 1, LLC*, 414 P.3d 812 (Nev. 2018). The court upheld a district court’s order granting summary
12 judgment in favor of SFR on JPMorgan’s unjust enrichment claim based on the voluntary payment
13 doctrine. *Id.* The court held, “for purposes of the voluntary payment doctrine, ‘voluntary’ means
14 ‘without protest as to its correctness or legality,’ *Nev. Ass’n Servs.*, 130 Nev. at 954, 338 P.3d at
15 1253, and it is undisputed that JPMorgan did not make the payments under protest.” *Id.* Further,
16 “it is undisputed that JPMorgan was aware of the pertinent facts when it made the post-sale
17 payments and was simply unaware of the legal effect of the sale. It appears to be the generally
18 accepted rule that a mistake of law (as opposed to a mistake of fact) will not preclude application
19 of the voluntary payment doctrine.” *Id.*

20 Here, when presented with legally indistinguishable facts from those considered by the
21 Supreme Court of Nevada in *JPMorgan*, the court holds that the voluntary payment doctrine bars
22 plaintiff from recovering on its unjust enrichment claim. *See id.*

23 **IV. Conclusion**

24 In light of the foregoing, plaintiff has not shown that it is entitled to judgment as a matter
25 of law. Conversely, the HOA and SFR’s motions demonstrate that they are entitled to judgment
26 as a matter of law, as the property at issue transferred to SFR free and clear of the deed of trust.

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Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion for summary judgment (ECF No. 40) be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that the HOA's motion for summary judgment (ECF No. 36) be, and the same hereby is, GRANTED, consistent with the foregoing.

IT IS FURTHER ORDERED that SFR's motion for summary judgment (ECF No. 39) be, and the same hereby is, GRANTED, consistent with the foregoing.

IT IS FURTHER ORDERED that SFR shall prepare and submit to the court a proposed judgment consistent with the foregoing within thirty (30) days of the date of this order.

DATED June 28, 2018.


UNITED STATES DISTRICT JUDGE